



RESOLUTION

**AUTHORIZING THE CITY OF NASHUA TO ENTER INTO A CONTRACT
EXTENSION WITH ALTERNATE TRANSIT ADVERTISING, INC. FOR
MARKETING OF TRANSIT ADVERTISING**

CITY OF NASHUA

In the Year Two Thousand and Seven

RESOLVED by the Board of Alderman of the City of Nashua that the City is authorized to enter into the attached contract extension with Alternate Transit Advertising, Inc. for marketing of transit advertising for the period of June 1, 2007 through May 31, 2008.

TRANSIT ADVERTISING SERVICES EXTENSION

Agreement is made by and between ALTERNATE TRANSIT ADVERTISING INC., a New Hampshire corporation having its principal place of business in Greenland, New Hampshire ("Contractor") and the CITY OF NASHUA, a municipal corporation, with its principal office at 229 Main Street, Nashua, New Hampshire ("City").

WITNESSETH

In consideration of mutual covenants and promises contained in the original AGREEMENT FOR TRANSIT ADVERTISING SERVICES dated May 4, 2004, the parties heretofore agree to the following:

The City agrees to extend terms of the advertising agreement for a period of one (1) year, commencing June 1st, 2007, and terminating May 31st, 2008.

All other terms and conditions as previously agreed to in the original agreement, shall remain in effect and unchanged.

IN WITNESSED WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective officers, duly authorized, on the dates signed below.

CONTRACTOR: ALTERNATE TRANSIT ADVERTISING

By: _____

Date: _____

Attest By: _____

Date: _____

CITY: CITY OF NASHUA

By: _____

Bernard A. Streeter, Mayor

Date: _____

Attest By: _____

Date: _____

AGREEMENT FOR TRANSIT ADVERTISING SERVICES

PREAMBLE

This Agreement is made by and between the City of Nashua, New Hampshire, hereinafter referred to as the "City" and Alternate Transit Advertising Inc, Greenland, NH, hereinafter referred to as the "Contractor".

ARTICLE I – DESCRIPTION OF PROFESSIONAL SERVICES TO BE RENDERED

WHEREAS, the Contractor has the management and technical expertise, personnel and other assets necessary to market and sell the City's on-board transit advertising spaces; and

WHEREAS, the City is desirous of acquiring such services;

NOW THEREFORE, in consideration of the mutual promises and conditions herein contained, the parties hereto agree as follows:

1. The City hereby grants unto the Contractor, the rights to market and sell interior and exterior display advertising on all passenger transit vehicles, now or hereafter operated by the Nashua Transit System, for the period beginning June 1, 2004, until midnight May 31, 2007. The City shall not be bound by any sales of space by the Contractor extending beyond May 31, 2007, but, at its sole discretion, may honor such sales if deemed to be in the best interests of the City. The City shall advise the Contractor prior to May 31, 2007, of those sales that shall be so honored.
2. The City agrees to supply, repair and maintain all exterior frames on each vehicle it being understood and agreed that each vehicle shall be equipped as follows at a minimum:

	City Bus (7 coaches)	City Lift (9 vans)	City Lift (3 vans)
Rear	21" X 44"	21" X 44"	21" X 70"
Curb Side	21" X 72"	21" X 44"	21" X 44"
Street Side	30" X 108"	21" X 72"	21" X 72"

3. The time period of the Agreement may be extended by further mutual written agreement of the parties.
4. The City shall receive and store signs at the bus garage until their scheduled use, and shall remove and install signs into advertising frames as directed by the Contractor.
5. The Contractor shall determine the text and graphics of all advertising display signs. No tobacco products, religious subjects, alcoholic beverages, political posters or products with sexual connotations will be allowed to be advertised on any vehicle belonging to the Nashua Transit System. The City shall retain the right to require the removal of any advertising that it considers disreputable or objectionable.

6. In consideration of the advertising privileges granted herein, the Contractor agrees to pay to the City a sum equal to seventy percent (70%) of the net space billings. The Contractor shall submit a statement by the tenth (10th) day of each month indicating all advertising in effect for the previous month. Amounts collectible shall be paid to the City within (30) days of month end. If the Contractor fails to make payments as specified or does not take reasonable steps to collect on the sales of space, the City may, upon serving written notice, immediately terminate the Agreement.
7. The City shall have the right to utilize any unsold space to promote the transit system, but only during such time as said space remains unsold or is not being used for promotion of available space.
8. The Contractor shall have the right, and is encouraged, to display public, educational or charitable advertising of a non-commercial nature in any unsold space. Any nominal fees collected for installations and services shall belong solely to the Contractor.
9. Trade/barter contracts with newspaper, radio or television media may be acceptable subject to approval by the City. Any commitment thus secured shall be for the sole use of the City for public information and/or to promote the transit system. The Contractor's interest shall be protected by establishing a cash/barter ratio commensurate with the percentage agreement set forth in Paragraph 6. The dollar value of any trade or barter agreements made during each contract year shall be applied as a credit toward the Contractor's Guaranteed Minimum Payment as set forth in Paragraph 10.
10. The Contractor agrees to pay to the City within thirty days of the end of each calendar quarter, beginning with the quarter ending August 31, 2004 the difference, if any, between the amount payable under the provisions of Paragraph 6 and the sum of \$2,083.00 per month, which the parties agree is the Guaranteed Minimum Monthly Payment. The Guaranteed Minimum Monthly payment is based on current fleet size and will be proportionally adjusted for the life of this agreement to the actual fleet size, should it change.
11. The Contractor shall retain full control as to rate charges as well as the terms, conditions and manner of payment by advertisers, which rates shall be reviewed from time to time and be adjusted as necessary to reflect local market conditions.
12. The City shall have the right at all times to examine the contracts, books and records of the Contractor as they pertain to this Agreement.
13. The Contractor agrees to maintain, at all times, its best efforts in procuring advertising contracts so as to maximize this source of revenue to the City.
14. The City agrees to provide to the Contractor any information, which it may reasonably request to assist in selling the advertising space in and about the buses.
15. The Contractor shall indemnify and hold harmless the City, its agents and its employees from and against all claims, damages, losses and expenses including attorney's fees, resulting from the performance of work that (a.) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use therefrom and (b.) is caused in whole or in part by any negligent act or omission of anyone employed directly or indirectly by the Contractor.
16. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.
17. Any dispute related to this Agreement shall be governed by the laws of the State of New Hampshire, and any litigation related to this Agreement shall be brought in a court located in the State of New Hampshire.

ARTICLE II – GENERAL PROVISIONS

1. Energy Conservation Requirements

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan in compliance with the Energy Policy and Conservation Act.

2. Access to Records and Reports

The following access to records requirements apply to this Contract:

- a. Where the City is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(I), the Contractor agrees to provide the City, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a) 1, which is receiving federal assistance through the programs described at 49 U.S.C. 5307, 5309, or 5311.
- b. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- c. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the City, the FTA Administrator, the Comptroller General or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 C.F.R. 18.39 (I)(11)

3. Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement between the City and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

4. Recycled Products

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B or 40 C.F.R. Part 247.

5. No Government Obligation to Third Parties

The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

6. Program Fraud and False or Fraudulent Statements and Related Acts

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et. seq and U.S. DOT regulations, "Program Fraud Civil Remedies", 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes or causes to be made, a false, fictitious, or fraudulent claim, statement, submission or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal Assistance originally awarded by FTA under the authority of 49 U.S.C./5307, the Government reserves the right to impose the penalties of 18 U.S.C./1001 and 49 U.S.C./5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

7. Termination

a. Termination for Convenience

The City may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract closeout costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City to be paid the Contractor. If the Contractor has any property in its possession belonging to the City, the Contractor will account for the same, and dispose of it in the manner the City directs.

b. Termination for Default (Breach or Cause)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the City may terminate this contract for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the City that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the City, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure

The City in its sole discretion may, in the case of a termination for breach or default, allow the Contractor thirty (30) days *in which to cure the defect. In such*

case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to City's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor or written notice from the City setting forth the nature of said breach or default, City shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude City from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. *Waiver of Remedies for any Breach*

In the event that the City elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the City shall not limit the City's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

8. Civil Rights Requirements

The following requirements apply to the underlying contract:

- a) Nondiscrimination – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C./2000d, section 303 of the Age discrimination Act of 1975, as amended, 42 U.S.C./6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C./12132, Federal Transit law at 49 U.S.C./5332, and state and local laws, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, sexual orientation, age or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b) Equal Employment Opportunity – The following equal opportunity requirements apply to the underlying contract:
 - (1) Race, Color, Creed, National Origin, Sex, Sexual Orientation – in accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C./2000e, and Federal transit laws at 49 U.S.C. /5332 and state and local laws, the Contractor agrees to comply with all applicable equal employment opportunity requirements of the U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et. seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity", as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Opportunity, 42 U.S.C./2000e note), and with any applicable Federal statutes, executive orders regulations, Federal policies and state and local laws that may in the future affect construction activities undertaken in the course of this Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, sexual orientation or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - (2) Age – In accordance with section 4 of the Age Discrimination In Employment Act of 1967, as amended, 29 U.S. C. / 623 and Federal transit law at 49 U.S. C. /5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C./12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

c) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by the FTA, modified only if necessary to identify the affected parties.

9. Disadvantaged Business Enterprise (DBE)

a) The Federal Fiscal Year goal has been set by the City of Nashua in an attempt to match projected procurements with available qualified disadvantaged businesses. The City of Nashua goals for budgeted service contracts, bus parts, and other material and supplies for Disadvantaged Business Enterprises have been established by the City of Nashua as set forth by the Department of Transportation Regulations 49 C.F.R. Part 23, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this request for proposal.

If a specific goal is assigned to this contract, it will be clearly stated in the Special Specifications, and if the contractor is found to have failed to exert sufficient, reasonable and good faith efforts to involve DBE's in the work provided, The City of Nashua may declare the Contractor non-compliant and in breach of contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to this contract.

1) Policy – It is the policy of the Department of Transportation and the City of Nashua that Disadvantaged Business Enterprises, as defined in 49 C.F.R. Part 23, and as amended in Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, shall have the maximum opportunity to participate in the performance of Contract financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 C.F.R. Part 23 and Section 106(c) of the STURAA of 1987 apply to this Contract.

The Contractor agrees to ensure that DBEs as defined in 49 CFR Part 23 and Section 106 (c) of the STURAA of 1987 have the maximum opportunity to participate in the whole or in part with federal funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, sexual orientation, age or physical handicap in the award and performance of subcontracts. It is further the policy of the City of Nashua to promote the development and increase the participation of businesses owned and controlled by DBEs. DBE involvement in all phases of The City of Nashua's procurement activities is encouraged.

2) DBE obligation – The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 C.F.R. Part 23 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

- 3) Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, The City of Nashua may declare the contractor non-compliant and in breach of contract.
 - 4) The contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with the City of Nashua's DBE program. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of the City of Nashua and will be submitted to the City of Nashua upon request.
 - 5) The City of Nashua will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:
 - Identification of qualified DBE
 - Available listing of Minority Assistance Organizations
 - Holding bid conferences to emphasize requirements
- b) DBE Program Definitions, as used in the contract:
- 1) Disadvantaged business means a small business concern:
 - i. Which is at least 51% owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 % of the stock of which is owned by one or more socially and economically disadvantaged individuals;
 - ii. Whose management and daily operations are controlled by one or more of the socially and economically disadvantaged individuals who own it, or
 - iii. Which is at least 51 % owned by one or more women individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women individuals; and
 - iv. Whose management and daily business operations are controlled by one or more women individuals who own it.
 - 2) "Small business concern" means a small business as defined by Section 3 of the Small Business Act and Appendix B – (Section 106(c) Determinations of Business Size.
 - 3) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.
 - i. "Black Americans", which includes persons having origins in any of the Black racial groups of Africa;
 - ii. "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - iii. "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians
 - iv. "Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the

Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;

- v. "Asian-Indian Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh.

10. Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with any provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City of Nashua requests which would cause the City of Nashua to be in violation of the FTA terms and conditions.

CITY OF NASHUA

By Contractor this 3 day of May, 2004

[Signature]
Name
President/owner

Attest by:

[Signature]
Name

Account Executive
Title

By City this 4 day of May 2004

[Signature]
Name

Mayor, City of Nashua

Attest by:

[Signature]
Name

Mayor's Assistant
Title